

V. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that neither the commencement of this action nor the provisions of this Order and Judgment shall in any way affect, determine, or prejudice any and all legal rights of any employees of defendant not listed in Exhibit A, be they current or former employees, to file any action against defendant under section 16(b) of the Act or likewise for any current or former employee listed in Exhibit A to file any action against defendant under section 16(b) of the Act for any violations alleged to have occurred after September 25, 1986.

VI. ORDERED, ADJUDGED, AND DECREED that the costs of this action shall be taxed by the Clerk against the defendant.

/s/ Mitchell H. Cohen
Mitchell H. Cohen
Senior Judge
United States District Court

DATED: Camden, New Jersey
June 8, 1987

THE CLARIDGE HOTEL AND CASINO
REVISED INTEREST COMPUTATION SUMMARY

A59

NAME	BACK WAGE PERIOD BEGIN	COVERED END	BACK WAGE PERIOD MID-DATE	REVISED BACK WAGE AMOUNTS	TOTAL INT to 6/5/87	TOTAL P+I to 6/5/87
ACCARDI, VINCENT	28-Nov-82	25-Sep-86	26-Oct-84	\$557.43	\$174.10	\$731.53
ALEXANDER, MILLIE	24-Oct-82	25-Sep-86	09-Oct-84	\$2,035.63	\$650.12	\$2,685.75
ALLEN, MICHAEL	24-Oct-82	27-Mar-86	10-Jul-84	\$712.43	\$254.03	\$966.46
ALLISON, WILLIAM	12-Dec-82	17-Jun-84	14-Sep-83	\$1,867.63	\$908.69	\$2,776.32
AMICO, ANTHONY	12-Dec-82	27-Nov-83	05-Jun-83	\$1,429.90	\$770.28	\$2,200.18
ANGELIS, GEORGE	24-Oct-82	04-Mar-84	29-Jun-83	\$1,266.16	\$650.98	\$1,927.14
ARCIANI, ROBERT	24-Oct-82	25-Sep-86	09-Oct-84	\$1,200.60	\$383.44	\$1,584.04
ARMSTRONG, JILL	17-Mar-85	25-Sep-86	20-Dec-85	\$423.06	\$65.28	\$488.34
AYARS, DOROTHY	13-Nov-83	25-Sep-86	19-Apr-85	\$111.85	\$27.29	\$139.14
AZZARA, THOMAS	24-Oct-82	25-Sep-86	09-Oct-84	\$514.63	\$164.36	\$678.99
BACH, JAMES	03-Jan-83	18-Oct-85	26-May-84	\$1,238.53	\$464.61	\$1,703.14
BADA, HELEN B	24-Oct-82	25-Sep-86	09-Oct-84	\$438.16	\$139.94	\$578.10
BADA, JR., JOSEPH	24-Oct-82	25-Sep-86	09-Oct-84	\$4,400.02	\$1,405.24	\$5,805.26
BAIOCCI, ROGER	14-Oct-84	25-Sep-86	04-Oct-85	\$43.77	\$7.96	\$51.73
BALLENTINE, GLORIA	20-Mar-86	25-Sep-86	22-Jun-86	\$194.43	\$17.73	\$212.16
BALL, STEVEN	26-Jun-86	25-Sep-86	10-Aug-86	\$48.16	\$3.73	\$51.89
BASCHAROW, SUSANNE	22-Apr-84	25-Sep-86	09-Jul-85	\$756.75	\$161.79	\$918.54
BAYARD, EVERN	29-Aug-85	25-Sep-86	13-Mar-86	\$347.55	\$43.64	\$391.19
BHATTI, MADBOOL	26-Jun-86	25-Sep-86	10-Aug-86	\$82.71	\$6.41	\$89.12
BIRNBAUM, ALAN	11-Sep-83	25-Sep-86	19-Mar-85	\$206.73	\$52.93	\$259.66
BISHOP, DOROTHY	20-Feb-83	25-Sep-86	07-Dec-84	\$1,769.30	\$523.01	\$2,292.31

BEST AVAILABLE COPY

NAME	BACK WAGE PERIOD		BACK WAGE PERIOD MID-DATE	REVISED BACK WAGE AMOUNTS	TOTAL INT		TOTAL P+I to 6/5/87
	BEGIN	COVERED END			to 6/5/87		
BISHOP, JOHN	24-Oct-82	02-Oct-83	13-Apr-83	\$140.00	\$80.50	\$220.50	
BISHOP, JUDITH	24-Oct-82	06-Nov-83	01-May-83	\$591.68	\$335.01	\$924.69	
BLECKI, ROBERT	03-Nov-83	25-Sep-86	14-Apr-85	\$997.66	\$245.34	\$1,243.00	
BONHAM, LEWIS	24-Oct-82	25-Sep-86	09-Oct-84	\$2,819.58	\$900.52	\$3,720.20	
BOWERS, THERESA	24-Oct-82	25-Jul-85	09-Mar-84	\$1,400.19	\$571.69	\$1,971.88	
BOYER, BARBARA	23-May-85	25-Sep-86	23-Jan-86	\$11.20	\$1.60	\$12.80	
BOYER, JERRI	23-May-85	25-Sep-86	23-Jan-86	\$12.38	\$1.76	\$14.14	
BOYER, DENISE	24-Oct-82	25-Sep-86	05-Oct-84	\$2,040.85	\$651.79	\$2,692.54	
BOYER, THEODORE	24-Oct-82	25-Sep-86	05-Oct-84	\$6,105.89	\$1,950.04	\$8,055.93	
BRADSHAW, NICOLETTE	09-Oct-83	25-Sep-86	02-Apr-85	\$203.25	\$50.95	\$254.20	
BRANTLEY, GERALDINE	24-Oct-82	31-Jul-83	13-Mar-83	\$235.77	\$140.81	\$376.58	
BRATTON, JOSEPH	24-Oct-82	25-Sep-86	09-Oct-84	\$954.97	\$304.99	\$1,259.96	
BROADUS, JANICE	24-Oct-82	23-Oct-83	24-Apr-83	\$266.97	\$151.55	\$418.52	
BROWN, JACK	24-Oct-82	23-Sep-84	06-Oct-83	\$671.24	\$319.15	\$990.39	
BROWN, ROBERT	24-Oct-82	05-Dec-82	14-Nov-82	\$255.00	\$176.36	\$431.36	
BROWN, VERNON	14-Oct-84	27-Mar-85	05-Jul-85	\$113.25	\$24.36	\$137.61	
BRUNNER, DEBORAH	24-Oct-82	16-Mar-85	03-Feb-84	\$272.94	\$15.57	\$388.51	
BRYANT, SANDRA	24-Oct-82	25-Sep-86	09-Oct-84	\$1,102.56	\$352.12	\$1,454.68	
BURDEN, HARVEY	24-Oct-82	18-Sep-86	05-Oct-84	\$5,750.69	\$1,844.72	\$7,595.41	
BURSEL, RICHARD G.	24-Oct-82	05-Jun-83	13-Feb-83	\$633.00	\$390.69	\$1,023.69	
BURPEE, CYNTHIA	12-Feb-84	25-Sep-86	04-Jun-85	\$458.19	\$103.94	\$562.13	
BURST, PAUL	24-Oct-82	30-Jan-83	12-Dec-82	\$903.75	\$602.18	\$1,505.93	
BURWELL, LINDA	24-Oct-82	25-Sep-86	09-Oct-84	\$1,284.66	\$410.28	\$1,694.94	
CARALLERO, CARLOS	24-Oct-82	25-Sep-86	09-Oct-84	\$953.08	\$304.39	\$1,257.47	

NAME	BACK WAGE PERIOD BEGIN	COVERED END	BACK WAGE PERIOD MID-DATE	REVISED BACK WAGE AMOUNTS	TOTAL INT to 6/5/87	TOTAL P+I to 6/5/87
CALANTONI, CAROL	24-Oct-82	25-Sep-86	09-Oct-84	\$1,064.86	\$740.08	\$1,404.94
CALDERETTI, STEPHANIE	24-Oct-82	22-Jul-84	07-Sep-83	\$1,011.15	\$495.19	\$1,506.34
CAMPBELL, DENISE	24-Oct-82	19-Jun-83	20-Feb-83	\$430.89	\$263.79	\$694.68
CAMPTON, WILDA	20-Nov-83	18-Sep-86	19-Apr-85	\$1,501.06	\$366.28	\$1,867.34
CANOSE, RALPH	24-Oct-82	25-Sep-86	09-Oct-84	\$1,400.36	\$447.23	\$1,847.59
CARIS, PETER	05-Jun-83	25-Sep-86	29-Jan-85	\$56.92	\$15.65	\$72.57
CARIS, WENDY	07-Oct-84	25-Sep-86	01-Oct-85	\$1,053.99	\$192.92	\$1,246.91
CARNEY, DONNA	24-Oct-82	25-Sep-86	09-Oct-84	\$2,406.74	\$768.64	\$3,175.38
CARRION, DIANA	27-Mar-86	25-Sep-86	26-Jun-86	\$183.75	\$16.54	\$200.29
CATERINA, THOMAS	28-Nov-82	25-Sep-86	26-Oct-84	\$689.31	\$215.30	\$904.61
CHONCOW, HARRIET	24-Oct-82	25-Sep-86	09-Oct-84	\$706.76	\$225.72	\$932.48
CHOI, YONG S	24-Oct-82	04-Sep-86	28-Sep-84	\$1,108.62	\$358.76	\$1,467.38
CHONKO, JOSEPH	24-Oct-82	28-Aug-86	25-Sep-84	\$6,110.04	\$1,985.92	\$8,095.96
CHO, SUK HI	24-Oct-82	25-Sep-86	09-Oct-84	\$2,367.57	\$756.13	\$3,123.70
CIRINCION, ROBERT	22-May-83	25-Dec-83	07-Sep-83	\$449.37	\$220.07	\$669.44
CLAUSON, FLORENCE	24-Oct-82	04-Sep-86	28-Sep-84	\$1,079.79	\$349.43	\$1,429.22
CLEARFIELD, TINA	21-Aug-83	08-Apr-84	14-Dec-83	\$450.33	\$200.75	\$651.08
CLOAK, KEITH	22-May-83	25-Sep-86	22-Jan-85	\$561.26	\$155.87	\$717.13
COHEN, LINDA	24-Oct-82	25-Sep-86	09-Oct-84	\$2,781.37	\$888.29	\$3,669.66
COLBERT, WILLIAM	24-Oct-82	25-Sep-86	09-Oct-84	\$6,351.92	\$2,028.61	\$8,380.53
COLLINS, ROBIN	30-Mar-83	11-Sep-83	20-Jun-83	\$200.84	\$106.07	\$306.91
CONANT, QUETTA	24-Oct-82	10-Oct-85	17-Apr-84	\$1,790.68	\$701.64	\$2,492.32
CONNERY, FRANCIS	01-Aug-85	25-Sep-86	27-Feb-86	\$689.00	\$89.84	\$778.84
CONWAY, DONALD	24-Oct-82	03-Apr-86	13-Jul-84	\$5,923.20	\$2,103.42	\$8,026.62
COOKINHAM, THEA	13-May-84	25-Sep-86	19-Jul-85	\$78.10	\$16.39	\$94.49
DAWILL, JOAN	24-Oct-82	20-Jan-85	07-Dec-83	\$442.46	\$198.61	\$641.07

NAME	BACK WAGE PERIOD BEGIN	BACK WAGE COVERED END	BACK WAGE PERIOD MID-DATE	REVISED BACK WAGE AMOUNTS	TOTAL INT to 6/5/87	TOTAL P+I to 6/5/87
DARNELL, STANLEY	26-Aug-84	25-Sep-86	10-Sep-85	\$147.59	\$28.14	\$175.73
DAVIS, DENISE	09-Jan-83	11-Mar-84	10-Aug-83	\$180.33	\$90.62	\$270.95
DAY, DAVID	24-Oct-82	22-Apr-84	24-Jul-83	\$760.22	\$398.37	\$1,178.59
DeCARD, ROBERT	24-Oct-82	25-Sep-86	09-Oct-84	\$1,199.87	\$383.20	\$1,583.07
DECKER, PERCY	24-Oct-82	03-Apr-86	13-Jul-84	\$1,317.58	\$467.89	\$1,785.47
DeMARCO, JR., MEDIO	24-Oct-82	16-May-85	03-Feb-84	\$661.91	\$280.28	\$942.19
DiFABIO, CRAIS	24-Oct-82	25-Sep-86	09-Oct-84	\$1,561.32	\$498.64	\$2,059.96
DILKS, DAVID	07-Oct-84	25-Sep-86	01-Oct-85	\$772.45	\$141.39	\$913.84
D'INNOCENZIO, JACK	24-Oct-82	25-Sep-86	09-Oct-84	\$807.38	\$257.85	\$1,065.23
DIPIETRO, NICHOLAS	24-Oct-82	01-Aug-85	13-Mar-84	\$654.78	\$266.36	\$921.14
DONAGHY, FRUCE	04-Mar-84	22-Jul-84	13-May-84	\$522.36	\$198.92	\$721.28
DONAHUE, MAUREEN	03-Jan-87	25-Jul-85	14-Apr-84	\$519.59	\$204.25	\$723.84
DORNERSTAS, LARRY	24-Oct-82	25-Sep-86	09-Oct-84	\$1,379.33	\$440.52	\$1,819.85
DOOLEY, JOYCE	24-Oct-82	25-Sep-86	09-Oct-84	\$700.87	\$223.84	\$924.71
DOYLE, MICHAEL	24-Oct-82	04-Sep-86	28-Sep-84	\$365.53	\$118.29	\$483.82
DUFFY, JR., JOHN	22-May-83	26-Sep-85	24-Jul-84	\$511.79	\$179.52	\$691.31
D'ALLESANDRO, ANDREA	24-Oct-82	24-Feb-85	25-Dec-83	\$805.35	\$355.29	\$1,160.64
D'ARATO, EMIL	24-Oct-82	29-May-83	09-Feb-83	\$3,224.17	\$1,998.11	\$5,222.28
D'AMBRUSIO, PATRICIA	14-Nov-82	25-Sep-86	19-Oct-84	\$1,024.73	\$322.94	\$1,347.67
EASTER, RICH	24-Oct-82	26-Dec-82	24-Nov-82	\$180.00	\$122.78	\$302.78
ELWELL, GLORIA	24-Oct-82	08-Jan-86	01-Jun-84	\$1,935.93	\$721.76	\$2,657.69
FANNING	13-Nov-83	22-Apr-84	01-Feb-84	\$46.86	\$19.88	\$66.74
FED, ALFONSO	24-Oct-82	25-Sep-86	09-Oct-84	\$927.96	\$296.36	\$1,224.32
FETHERSON, EILEEN	24-Oct-82	25-Sep-86	09-Oct-84			

NAME	BACK WAGE		BACK WAGE PERIOD	REVISED BACK WAGE PERIOD	TOTAL INT to 6/5/87	TOTAL P+I to 6/5/87
	COVERED BEGIN	END				
FETHERSON, EILEEN	24-Oct-82	25-Sep-86	09-Oct-84	\$1,433.84	\$392.48	\$1,826.32
FITZGERALD, JAMES	24-Oct-82	25-Sep-86	09-Oct-84	\$1,665.67	\$35.82	\$1,701.49
FOX, JR., JOHN	24-Oct-82	25-Sep-86	09-Oct-84	\$1,228.93	\$392.48	\$1,621.41
FREEDMAN, JACK	25-Oct-85	04-Sep-86	31-Mar-86	\$300.00	\$35.82	\$335.82
FROID, GREGORY	24-Oct-82	25-Sep-86	09-Oct-84	\$1,038.74	\$331.74	\$1,370.48
FRYSTOCK, DONNA	24-Oct-82	14-Nov-85	04-May-84	\$4,750.18	\$1,826.00	\$6,576.18
FUSCIA, MARK	24-Oct-82	10-Apr-83	16-Jan-83	\$251.19	\$160.12	\$411.31
FUSCO, ELIZABETH	24-Oct-82	25-Sep-86	09-Oct-84	\$558.06	\$178.23	\$736.29
GARMAN, JR., EDWARD	24-Oct-82	14-Oct-85	13-Apr-84	\$3,254.00	\$1,272.24	\$4,526.24
GASKILL, JOAN	03-Jul-86	25-Sep-86	14-Aug-86	\$10.32	\$0.79	\$11.11
GATEMAN, IRVIN	03-Nov-83	25-Sep-86	14-Apr-85	\$166.28	\$40.89	\$207.17
GAZZIA, GINA	24-Oct-82	11-Sep-86	02-Oct-84	\$1,151.71	\$371.07	\$1,522.78
GERETY, JANINE	24-Oct-82	18-Sep-86	05-Oct-84	\$1,074.03	\$344.53	\$1,418.56
SIRCANO, DOMINIC	24-Oct-82	18-Sep-86	05-Oct-84	\$2,162.25	\$700.03	\$2,862.28
GLASSETTER, BARBARA	24-Oct-82	27-Feb-86	26-Jun-84	\$1,172.12	\$424.75	\$1,596.87
GLASSER, CLAUDINA	10-Jul-86	25-Sep-86	17-Aug-86	\$25.49	\$1.93	\$27.42
GONZALEZ, FRANCESCO	24-Oct-82	02-Oct-83	13-Apr-83	\$1,815.17	\$1,043.75	\$2,858.92
GOODWIN, GERALD	24-Oct-82	06-Nov-83	01-May-83	\$24.08	\$13.55	\$37.63
GREENSTEIN, LAURA	24-Oct-82	15-May-83	02-Feb-83	\$120.40	\$75.22	\$195.62
GRIECO, FRANK	24-Oct-82	25-Sep-86	09-Oct-84	\$923.59	\$294.97	\$1,218.56
GUARINO, JOSEPH	24-Oct-82	05-Jun-83	13-Feb-83	\$363.76	\$224.52	\$588.28
GURICK, DANIEL	06-Feb-83	18-Sep-86	27-Nov-84	\$938.26	\$281.26	\$1,219.52
HACKLEY, GEORGE	24-Oct-82	12-Jun-83	16-Feb-83	\$422.15	\$259.49	\$681.64
HALL, GARY	07-Aug-83	25-Sep-86	01-Mar-85	\$1,068.34	\$280.74	\$1,349.08
HAMALIAN, GARY	24-Oct-82	12-Jun-83	16-Feb-83	\$59.22	\$36.40	\$95.62
HAMILTON, JUDITH	24-Oct-82	05-Jun-83	13-Feb-83	\$189.28	\$116.83	\$306.11
HARRISON, SHARON	27-Feb-83	19-Dec-85	24-Jul-84	\$745.40	\$248.54	\$993.94

NAME	BACK WAGE PERIOD COVERED		BACK WAGE PERIOD MID-DATE	REVISED BACK WAGE AMOUNTS	TOTAL INT to		TOTAL P+I to 6/5/87
	BEGIN	END			6/5/87	6/5/87	
PARAHAN, JOSEPH	22-May-83	18-Sep-86	18-Jan-85	\$72.61	\$20.26		\$92.87
HANSEN, JUNE	24-Oct-82	29-Apr-84	27-Jul-83	\$1,565.04	\$796.55		\$2,361.59
HARVEY, KENNETH	24-Oct-82	11-Sep-86	02-Oct-84	\$2,649.45	\$853.64		\$3,503.09
HARWOOD, SUSAN	28-Aug-83	11-Sep-86	05-Mar-85	\$774.11	\$202.37		\$976.48
HENNESSEY, FRANCIS	24-Oct-82	18-Sep-86	05-Oct-84	\$2,007.04	\$643.82		\$2,650.86
HENSON, DONALD	24-Oct-82	23-Jan-83	06-Dec-82	\$510.00	\$341.43		\$851.43
HENSON, WILLIAM	22-May-83	25-Sep-86	22-Jan-85	\$1,791.06	\$497.41		\$2,288.47
HERSCHMAN, SHARON	24-Oct-82	22-Nov-82	07-Nov-82	\$126.06	\$87.92		\$213.98
HINES, CHARLES	24-Oct-82	06-Jan-85	30-Nov-83	\$638.33	\$288.52		\$926.85
HINES, FLORENCE	23-Oct-83	25-Sep-86	09-Apr-85	\$931.21	\$230.95		\$1,162.16
HINES, SANDRA	06-Feb-83	25-Sep-86	30-Nov-84	\$1,668.11	\$557.40		\$2,425.51
HOTT, FRANCIS	24-Oct-82	25-Sep-86	09-Oct-84	\$2,542.55	\$912.01		\$3,354.56
HOVE, HOWARD	24-Oct-82	25-Sep-86	09-Oct-84	\$779.24	\$248.87		\$1,028.11
HOOD, GERALD	26-May-84	25-Sep-86	16-Jul-85	\$1,095.98	\$231.47		\$1,327.45
HORNE, SHELLEY	24-Oct-82	08-Sep-86	30-Sep-84	\$2,808.49	\$906.58		\$3,715.07
HUGHARD, WILLIAM	24-Oct-82	25-Sep-86	09-Oct-84	\$4,733.40	\$1,511.71		\$6,245.11
HUNT, JOSEPH	24-Oct-82	25-Sep-86	09-Oct-84	\$2,148.26	\$686.09		\$2,834.35
HURLEY, MARY	17-Jun-84	25-Sep-86	06-Aug-85	\$287.98	\$58.59		\$346.57
HUTLANDER, DENISE	23-May-83	25-Sep-86	22-Jan-85	\$32.35	\$8.98		\$41.33
JOHNSON, GARY	04-Jul-85	25-Sep-86	13-Feb-86	\$4,405.70	\$595.83		\$5,001.53
JOHNSON, JR., GUSTAVE	24-Oct-82	23-Jan-83	08-Dec-82	\$78.75	\$52.72		\$131.47
JOHNSON, JUDITH	24-Oct-82	06-Jun-85	14-Feb-84	\$559.01	\$234.16		\$793.17
JONES, FLORENCE	24-Oct-82	16-Oct-83	20-Apr-83	\$165.57	\$94.40		\$259.97
			13-Jun-84	\$1,296.19	\$476.54		\$1,772.93

NAME	BACK WAGE PERIOD COVERED		BACK WAGE PERIOD		REVISED BACK WAGE AMOUNTS	TOTAL INT to 6/5/87		TOTAL P+I to 6/5/87
	BEGIN	END	BEGIN	MID-DATE				
KAMBOURIS, NICHOLAS	15-Apr-84	12-Aug-84	13-Jun-84		\$1,532.50	\$347.64		\$1,880.14
KAFFAUF, DAVID	19-Aug-84	20-Mar-86	04-Jun-85					
VAYALS, JOHN	13-Feb-83	25-Dec-83	20-Jul-83		\$1,773.29	\$908.28		\$2,681.57
KEARNS, THOMAS	24-Oct-82	25-Sep-86	09-Oct-84		\$842.20	\$268.97		\$1,111.17
KENNEDY, MICHAEL	22-May-83	25-Sep-86	22-Jan-85		\$886.27	\$246.13		\$1,132.40
KIRCHNER, JANICE	11-Sep-86	25-Sep-86	18-Sep-86		\$56.25	\$3.78		\$60.03
KNOBLAUCH, KENNETH	24-Oct-82	19-Jun-83	20-Feb-83		\$147.69	\$90.41		\$238.10
KOSTA, CAROL ANN	09-Jan-83	25-Sep-86	16-Nov-84		\$1,040.89	\$316.37		\$1,357.26
KRAMER, JAY	24-Oct-82	25-Sep-86	09-Oct-84		\$935.61	\$305.19		\$1,240.80
KWOKA-RUSSELL, ADRIENNE	13-Nov-83	18-Sep-86	16-Apr-85		\$28.30	\$6.94		\$35.24
LAGRANGE, GLENN	24-Oct-82	25-Sep-86	09-Oct-84		\$8,708.83	\$2,781.34		\$11,490.17
LANDOLFO, PETER	24-Oct-82	25-Sep-86	09-Oct-84		\$815.07	\$260.31		\$1,075.38
LATALOTTI, GLEN	28-Aug-83	25-Sep-86	12-Mar-85		\$1,869.27	\$483.64		\$2,352.91
LEAHY, BRIAN	18-Sep-83	18-Sep-86	19-Mar-85		\$37.84	\$9.69		\$47.53
LEE, GERARD	24-Oct-82	25-Sep-86	09-Oct-84		\$1,320.08	\$421.59		\$1,741.67
LEONETTI, LOUIS	24-Oct-82	25-Sep-86	09-Oct-84		\$1,129.45	\$360.71		\$1,490.16
LEPNER, SHIRLEY	24-Oct-82	25-Sep-86	09-Oct-84		\$1,515.33	\$484.02		\$1,999.35
LIBERTO, DOLORES	24-Oct-82	25-Sep-86	09-Oct-84		\$130.82	\$80.74		\$211.56
LITENERT, JILL	24-Oct-82	05-Jun-83	13-Feb-83		\$1,524.29	\$667.76		\$2,192.05
LINA, MICHAEL	24-Oct-82	10-Mar-85	01-Jan-84		\$3,338.94	\$1,066.36		\$4,405.30
LIPTON, MAUREEN	24-Oct-82	25-Sep-86	09-Oct-84		\$345.49	\$186.11		\$531.60
LITTMAN, JOSHUA	24-Oct-82	15-Jan-84	05-Jun-83		\$566.45	\$279.21		\$845.66
LOGAN, EDWARD	24-Oct-82	08-Jul-84	31-Aug-83		\$855.71	\$552.03		\$1,407.74
LOGAN, MAUREEN	24-Oct-82	20-Mar-83	05-Jan-83		\$2,670.76	\$852.96		\$3,523.72
LONGO, DIANNE	11-Sep-86	25-Sep-86	18-Sep-86		\$15.00	\$1.01		\$16.01
LOPES, HOMER	24-Oct-82	12-Aug-84	18-Sep-83		\$4,696.94	\$2,277.82		\$6,974.76
					\$2,181.23	\$1,070.69		\$3,251.92

NAME	BACK WAGE PERIOD BEGIN	COVERED END	BACK WAGE PERIOD MID-DATE	REVISED BACK WAGE AMOUNTS	TOTAL INT to 6/5/87	TOTAL P+I to 6/5/87
LYNES, JR., THOMAS	07-Oct-84	25-Sep-86	01-Oct-85	\$571.67	\$104.64	\$676.31
MAENNER, CHRIS	24-Oct-82	25-Sep-86	09-Oct-84	\$7,330.85	\$2,341.25	\$9,672.10
MALOVANY, ARTHUR	24-Oct-82	25-Sep-86	09-Oct-84	\$2,334.21	\$745.48	\$3,079.69
MANNE, BARRY	24-Oct-82	03-Nov-83	29-Apr-83	\$151.92	\$85.66	\$237.58
MANIGUE, SARY	24-Oct-82	25-Sep-86	09-Oct-84	\$1,162.18	\$371.17	\$1,533.35
MARANO, MICHAEL	22-May-83	25-Sep-86	22-Jan-85	\$679.97	\$202.73	\$882.70
MARCIAL, JORGE	24-Oct-82	18-Sep-86	05-Oct-84	\$931.81	\$298.91	\$1,230.72
MAREN, MICHAEL	08-May-86	24-Jul-86	15-Jun-86	\$60.00	\$5.61	\$65.61
MAREH, RICHARD	24-Oct-82	10-Jul-86	31-Aug-84	\$1,079.13	\$361.49	\$1,440.62
MARTEL, ROGER	04-Mar-84	13-Jan-85	08-Aug-84	\$962.72	\$331.55	\$1,294.27
MARTINEZ, MAFY	07-Nov-82	25-Sep-86	16-Oct-84	\$1,245.98	\$394.42	\$1,640.40
MARTINEZ, RUBEN	24-Oct-82	13-Mar-86	03-Jul-84	\$3,974.29	\$1,428.63	\$5,402.92
MARTIN, LENA	24-Oct-82	25-Sep-86	09-Oct-84	\$1,532.62	\$485.47	\$2,022.09
MARTUZAS, BRIAN	24-Oct-82	18-Sep-86	05-Oct-84	\$1,039.74	\$333.53	\$1,373.27
MATLOCK, PATRICIA	24-Oct-82	04-Sep-86	28-Sep-84	\$1,339.45	\$433.46	\$1,772.91
MATOS, EDWIN	24-Oct-82	25-Sep-86	09-Oct-84	\$1,643.62	\$524.92	\$2,168.54
MAZASATTI, CARMEN	07-Oct-84	25-Sep-86	01-Oct-85	\$9,938.38	\$1,819.13	\$11,757.51
MAZASATTI, DEBORAH	23-May-85	18-Sep-86	19-Jan-86	\$41.79	\$6.01	\$47.80
McCLENDON, SERAIDINE	07-Aug-83	25-Sep-86	01-Mar-85	\$1,033.63	\$271.62	\$1,305.25
McCLUSKEY, FLORENCE	24-Oct-82	10-Jul-83	02-Mar-83	\$186.99	\$113.07	\$300.06
McCRIMICK, JANICE	30-Oct-83	04-Sep-86	02-Apr-85	\$650.53	\$163.08	\$813.61
McCULLOUGH, HENRY	24-Oct-82	09-Jan-83	01-Dec-82	\$334.95	\$226.36	\$561.31
McCULLOUGH, JR., CHARLES	24-Oct-82	25-Sep-86	09-Oct-84	\$707.23	\$225.67	\$933.10
				\$117.86	\$28.76	\$146.64

NAME	BACK WAGE PERIOD		BACK WAGE PERIOD MID-DATE	REVISED BACK WAGE AMOUNTS	TOTAL INT		TOTAL P+I to 6/5/87
	BEGIN	END			to	6/5/87	
McANIEL, MIRA	24-Oct-82	11-Sep-86	02-Oct-84	\$2,278.33	\$734.07	\$3,012.40	
McBIBBON, WILLIAM	24-Oct-82	04-Jul-85	28-Feb-84	\$664.65	\$274.38	\$939.03	\$5,587.90
	13-May-84	25-Sep-86	19-Jul-85	\$441.42	\$92.66	\$534.08	
	24-Oct-82	16-Sep-84	05-Oct-83	\$917.76	\$390.10	\$1,207.86	
	24-Oct-82	30-Dec-84	27-Nov-83	\$711.25	\$322.58	\$1,033.83	
	24-Oct-82	25-Sep-86	09-Oct-84	\$4,461.69	\$1,424.93	\$5,886.62	
	22-Jan-84	25-Sep-86	24-May-85	\$580.40	\$133.95	\$714.35	
	29-May-83	02-Sep-84	15-Jan-84	\$21.58	\$9.32	\$30.90	
	06-Jun-85	25-Sep-86	30-Jan-86	\$183.45	\$25.70	\$209.15	
	06-Jan-85	24-Jul-86	15-Oct-85	\$125.39	\$22.32	\$147.71	
	24-Oct-82	20-Feb-86	22-Jun-84	\$1,211.46	\$440.77	\$1,652.23	
	24-Oct-82	10-Jul-86	31-Aug-84	\$8,597.70	\$2,880.06	\$11,477.76	
	03-Nov-83	04-Sep-86	04-Apr-85	\$218.28	\$54.55	\$272.83	
	22-May-83	04-Mar-84	12-Oct-83	\$154.94	\$73.42	\$228.36	
	24-Oct-82	05-Aug-84	14-Sep-83	\$566.17	\$275.47	\$841.64	
	24-Oct-82	25-Sep-86	09-Oct-84	\$2,234.19	\$713.53	\$2,947.72	
	24-Oct-82	07-Oct-84	16-Oct-83	\$975.10	\$460.55	\$1,435.65	
	26-Jun-83	25-Sep-86	08-Feb-85	\$959.69	\$259.99	\$1,219.68	
	26-Aug-84	25-Sep-86	10-Sep-85	\$534.46	\$101.90	\$636.36	
	24-Oct-82	20-May-84	07-Aug-83	\$281.25	\$141.79	\$423.04	
	24-Oct-82	20-Jun-85	21-Feb-84	\$403.57	\$167.82	\$571.39	
	24-Oct-82	25-Sep-86	09-Oct-84	\$3,510.32	\$1,121.09	\$4,631.41	
	24-Oct-82	28-Aug-86	25-Sep-84	\$960.67	\$312.24	\$1,272.91	
	24-Oct-82	18-Sep-86	05-Oct-84	\$6,116.92	\$1,962.20	\$8,079.12	

NAME	BACK WAGE PERIOD COVERED		BACK WAGE PERIOD MID-DATE	REVISED BACK WAGE AMOUNTS	TOTAL INT to 6/5/87	TOTAL P+1 to 6/5/87
	BEGIN	END				
OLIVO, FRANK	13-Nov-83	24-Sep-86	19-Apr-85	\$68.28	\$16.67	\$84.95
OLIVO, LORRAINE	27-Mar-86	25-Sep-86	26-Jun-86	\$183.39	\$16.51	\$199.90
OSTRO, MARGIE	22-May-86	22-May-86	22-May-86	\$18.75	\$1.91	\$20.66
OWEN, MELVIN	06-Jun-85	25-Sep-86	30-Jan-85	\$493.37	\$69.12	\$562.49
PAJUNCO, CRAIS	24-Oct-82	25-Sep-86	09-Oct-84	\$2,392.79	\$764.19	\$3,156.98
PAPPA, KENNETH	24-Oct-82	25-Sep-86	09-Oct-84	\$1,386.40	\$442.77	\$1,829.17
PAROLINI, KENNETH	24-Oct-82	25-Sep-86	09-Oct-84	\$6,273.02	\$2,003.42	\$8,276.44
PASCAKETTI, MAXINE	24-Oct-82	25-Sep-86	09-Oct-84	\$6,626.95	\$2,116.45	\$8,743.40
PASSTO, BARBARA	03-Apr-86	11-Sep-86	22-Jun-86	\$40.95	\$3.73	\$44.68
PASTERINO, CAROL	24-Oct-82	18-Dec-83	22-May-83	\$219.55	\$120.38	\$339.93
PATRICK, JEAN	24-Oct-82	01-Aug-85	13-Mar-84	\$1,204.47	\$489.97	\$1,694.44
PEARSON, MARYANN	24-Oct-82	25-Sep-86	09-Oct-84	\$1,686.54	\$538.67	\$2,225.17
PENDERNEST, NORMAN	24-Oct-82	25-Sep-86	09-Oct-84	\$1,023.45	\$326.86	\$1,350.31
PEREIRA, RIGBERTO	23-Oct-83	28-Dec-83	25-Nov-83	\$30.00	\$13.63	\$43.63
PERKINS, RONALD	02-Jan-83	13-May-84	07-Sep-83	\$834.12	\$432.93	\$1,317.10
PERKINS, VIRGINIA	24-Oct-82	25-Sep-86	09-Oct-84	\$1,528.12	\$488.04	\$2,016.16
PERRI, ANTHONY	18-Dec-82	25-Sep-86	05-Nov-84	\$5,900.27	\$1,219.24	\$7,119.51
PERTNOY, BARBARA	08-Aug-85	25-Sep-86	02-Mar-86	\$402.69	\$52.02	\$454.71
PETERS, MARK	22-May-83	25-Sep-86	22-Jan-85	\$371.77	\$103.25	\$475.02
PETRUCCHI, MARIO	24-Oct-82	13-Feb-86	19-Jun-84	\$1,936.92	\$707.55	\$2,644.47
PHILLIPS, JOHN	01-May-86	25-Sep-86	13-Jul-86	\$337.50	\$28.70	\$366.20
PICCOLA, RALPH	24-Oct-82	25-Sep-86	09-Oct-84	\$1,484.39	\$474.07	\$1,958.46

AVAILABLE COPY

NAME	BACK WAGE COVERED		BACK WAGE PERIOD MID-DATE	REVISED BACK WAGE AMOUNTS	TOTAL INT to 6/5/87
	PERIOD BEGIN	END			
PLANTHOLT, WILLIAM	11-Sep-86	25-Sep-86	18-Sep-86	\$108.75	\$7.30
POUCHER, ALLEN	24-Oct-82	25-Sep-86	09-Oct-84	\$7,134.28	\$1,001.00
PRAS, TOBIE	24-Oct-82	23-Dec-83	24-May-83	\$957.76	\$523.49
PRESTON, MARTHA	24-Oct-82	02-Sep-84	28-Sep-83	\$973.64	\$419.52
PRYOR, GRADY	24-Oct-82	18-Sep-86	05-Oct-84	\$7,482.89	\$2,400.37
QUINN, NANCY	26-Jun-85	25-Sep-86	06-Feb-86	\$201.57	\$27.75
RAMSEY, RONALD	24-Oct-82	17-Feb-85	21-Dec-83	\$4,299.58	\$1,903.42
RAMSEY, SANDRA	01-Jan-84	13-Feb-86	22-Jan-85	\$1,055.13	\$293.03
RAUB, LINDA	01-Jul-84	25-Sep-86	13-Aug-85	\$1,083.29	\$217.62
REILLY, MICHAEL	06-Feb-83	25-Sep-86	30-Nov-84	\$471.42	\$140.66
RICE, GARY	24-Oct-82	25-Sep-86	09-Oct-84	\$243.92	\$77.90
ROADENBERGER, KEN	24-Oct-82	25-Sep-86	09-Oct-84	\$1,140.96	\$364.39
ROBERTS, DORIS	24-Oct-82	25-Sep-86	09-Oct-84	\$2,472.98	\$789.80
RODRIGUEZ, LUISE	24-Oct-82	25-Sep-86	09-Oct-84	\$931.97	\$297.64
ROMANELLI, FRANK	07-Oct-84	25-Sep-86	01-Oct-85	\$105.43	\$19.30
ROUSE, JOHN	24-Oct-82	25-Sep-86	09-Oct-84	\$5,851.00	\$1,868.63
POYER, ROBERT	23-Nov-82	25-Sep-86	24-Oct-84	\$2,599.60	\$814.55
RUGARBER, PAUL	31-Jul-83	25-Sep-86	26-Feb-85	\$329.34	\$86.99
RYLEY, JOSEPH	24-Oct-82	25-Sep-86	09-Oct-84	\$2,629.33	\$839.73
SARAO, JR., JOSEPH A.	24-Oct-82	25-Mar-84	10-Jul-83	\$281.05	\$145.32
SCHIFFMAN, PAUL	24-Oct-82	13-Mar-86	03-Jul-84	\$6,065.03	\$2,180.19
SCHUSTER, SR., DOUGLAS	24-Oct-82	25-Sep-86	09-Oct-84	\$1,561.60	\$498.73
SCHWARTZ, BRANDON	24-Oct-82	22-Jul-94	07-Sep-83	\$567.14	\$277.74
SECO, ANTONIO	03-Jan-83	22-Aug-84	27-Oct-84	\$4,112.50	\$1,282.83
SENCUS, MARILYN	24-Oct-82	19-Jun-83	20-Feb-83	\$167.86	\$102.76
SENGER, PATRICK	24-Oct-82	25-Sep-86	09-Oct-84	\$1,626.71	\$519.52
SENGER, PATRICK	24-Oct-82	25-Sep-86	09-Oct-84	\$3,462.83	\$1,105.92
SENGER, PATRICK	24-Oct-82	25-Sep-86	09-Oct-84	\$1,105.92	\$4,568.75

NAME	BACK WAGE PERIOD		BACK WAGE PERIOD	REVISED BACK WAGE	TOTAL INT to 6/5/87
	BEGIN	END	MID-DATE	AMOUNTS	
SIMMONS, HELENA	11-Sep-83	25-Sep-86	19-Mar-85	\$827.45	\$211.86
SIMMONS, JAMES	25-Jul-85	28-Aug-86	09-Feb-86	\$688.61	\$91.23
SIMPSON, JERRY	08-Apr-84	25-Sep-86	02-Jul-85	\$6,587.59	\$1,425.50
SINGER, SUZANNE	24-Oct-82	28-Aug-86	25-Sep-84	\$407.60	\$132.48
SISKA, ERVIN	24-Oct-82	03-Jul-83	27-Feb-83	\$1,054.27	\$640.13
SLICK, HARRY	06-Feb-83	20-Jun-85	13-Apr-84	\$677.94	\$266.65
SMALLS, SILBERT	07-Aug-83	20-Jan-85	29-Apr-84	\$408.03	\$157.60
SMALLWOOD, VIOLA	24-Oct-82	25-Sep-86	09-Oct-84	\$1,454.62	\$464.56
SMITH, GEORGE	06-May-84	25-Sep-86	16-Jul-85	\$990.16	\$209.12
SMITH, JOHN F.	22-May-83	18-Sep-83	20-Jul-83	\$225.00	\$115.24
SMITH, JOSEPH	24-Oct-82	25-Sep-86	09-Oct-84	\$2,409.18	\$769.42
SMITH, SHARON	22-May-83	05-Sep-85	13-Jul-84	\$517.08	\$183.62
SMOLINSKY, LYNDA	24-Oct-82	25-Sep-86	09-Oct-84	\$1,474.43	\$470.89
SPINNER, HARRY	24-Oct-82	20-Jan-85	07-Dec-83	\$504.19	\$226.32
SCUSA, ELLA	24-Oct-82	25-Sep-86	09-Oct-84	\$5,316.38	\$1,597.89
SPERA, MICHAEL	30-May-85	25-Sep-86	26-Jan-86	\$555.04	\$78.44
SPINKS, DANA	28-Aug-83	25-Sep-86	12-Mar-85	\$1,327.01	\$343.34
STALLINGS, CHRISTINE	24-Oct-82	20-Jun-86	21-Aug-84	\$1,047.27	\$355.09
STARER, MITCHELL	24-Oct-82	05-Jun-83	13-Feb-83	\$413.27	\$255.07
STARR, LINDA	24-Oct-82	20-Jun-85	21-Feb-84	\$1,382.40	\$574.87
STAS, ROBIN	30-Jan-83	25-Sep-86	27-Nov-84	\$802.05	\$240.43
STEINHAUER, VIRGINIA	24-Oct-82	25-Sep-86	09-Oct-84	\$2,858.50	\$912.92
STEIN, HOWARD	24-Oct-82	25-Sep-86	09-Oct-84	\$7,077.85	\$2,260.45

SOL:PSM:vk

25054

IN UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY
CAMDEN VINCINAGE
HONORABLE JEROME B. SIMANDLE

Civil Action No. 84-4336
(Non-Jury Trial)
(COHEN, J.)

WILLIAM E. BROCK, Secretary of Labor,
United States Department of Labor,
Plaintiff,

v.

THE CLARIDGE HOTEL AND CASINO
Defendant.

JOINT FINAL PRE-TRIAL ORDER

The following shall constitute the Final Pre-Trial Order pursuant to Rule 16 of the Federal Rules of Civil Procedure and this Final Pre-Trial Order shall govern the conduct of the trial of this case. Amendments to this order will be allowed only in exceptional circumstances to prevent manifest injustice.

APPEARANCES:

Attorneys for Defendant:

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PATRICIA M. RODENHAUSEN
Acting Regional Solicitor
BY: PERCY S. MILLER
Attorney

PART I. JURISDICTION

This Court has jurisdiction of the subject matter pursuant to section 17 of the Fair Labor Standards Act, 29 U.S.C. §217. Section 17 expressly confers upon this court, and all district courts of the United States, jurisdiction to restrain violations of the Act, including the restraint from withholding unpaid minimum wage or overtime wages found to be due.

The defendant admits it is a limited partnership, organized under the laws of the State of New Jersey, having its principal office and place of business at Park Place and Indiana Avenue, Atlantic City, New Jersey, which is within the jurisdiction of this court. This court has in personam jurisdiction of the defendant.

PART II. STIPULATED FACTS:

1. The Claridge Hotel and Casino has acted as an employer within the meaning of the Fair Labor Standards

Act by regulating the employment of all persons employed by it. The Claridge Hotel and Casino employs and has employed a number of employees who are engaged in commerce or in the production of goods for commerce. (Answer dated November 16, 1984 and Amended Answer dated February 14, 1985.)

2. The defendant is an enterprise engaged in commerce within the meaning of section 3(s)(1) of the Fair Labor Standards Act. (Amended Answer dated February 14, 1985).

3. From October 1, 1981 through January 30, 1983, persons regularly employed as boxpersons, floorpersons and pit bosses in each workweek worked more than forty (40) hours per week with some individual exceptions. (Defendant's Responses to Plaintiff's First Set of Requests for Admissions, Responses 4, 6, and 8; Deposition Paul Burst, page 16 line 23 through page 27, line 15).

4. Subsequent to January 30, 1983 and to date, persons regularly employed as boxpersons, floorpersons and pit bosses in each workweek worked more than forty (40) hours per week with some individual exceptions. (Deposition Paul Burst, page 16 line 23 through page 27 line 15.)

5. From October 1, 1981 to date, persons employed as boxpersons, floorpersons and pit bosses have not been paid on a shift rate basis. (Defendant's Responses to Plaintiff's First Set of Requests for Admissions, responses 15 through 20.)

6. Between October 1, 1981 through the present, under no circumstances were persons employed as boxpersons, floorpersons and pit bosses ever paid one and one-half times the hourly rate at which they were engaged for work

performed as boxpersons, floorpersons and pit bosses. (Defendant's Responses to Plaintiff's First Set of Requests for Admissions, responses 21, 22 and 23; Deposition of Paul Burst, page 97 line 11 through page 100 line 9; Deposition of Carol Livingstone, page 8, line 19 through page 13 line 8.)

7. Between October 1, 1981 through January 30, 1983, persons employed as boxpersons, floorpersons and pit bosses who worked less than a full day because of personal reasons were paid an hourly rate only for the hours actually worked on that day. (Defendant's Responses to Plaintiff's First Set of Requests for Admissions, responses 30, 31 and 32.)

8. Subsequent to January 30, 1983 and to date, persons employed as boxpersons, floorpersons and pit bosses who worked less than a full day because of personal reasons were paid an hourly rate only for the hours actually worked on that day. (Deposition Paul Burst, page 112 line 18 through page 123 line 13.)

9. The Claridge Hotel and Casino at no time, with reference to its Atlantic City operation, sought an opinion, oral or otherwise from the Wage and Hour Administrator or from the Secretary of Labor that its method of compensating boxpersons, floorpersons and pit bosses complied with the provisions of the Fair Labor Standards Act relative to overtime pay. (Defendant's Responses to Plaintiff's Second Set of Interrogatories, response 19.)

10. The Claridge Hotel and Casino at no time received a written opinion from the Wage and Hour Administrator or the Secretary of Labor commenting on the pay plan in effect at its Atlantic City operation relative to compensation of boxpersons, floorpersons and pit bosses.

(Defendant's Responses to Plaintiff's Second Set of Interrogatories, Response 20.)

11. The Claridge Hotel and Casino, through its officers and officials, was aware that the provisions of the Fair Labor Standards Act applied to its operation. The Claridge Hotel and Casino intended that persons employed as boxpersons, floorpersons and pit bosses not be compensated at time and one-half for hours of work in excess of forty (40) in a week performed as a boxperson, floorperson and pit boss. (Defendant's Responses to Plaintiff's First Set of Requests for Admissions, responses 35 through 38; Deposition of Paul Burst, page 97, line 11 through page 100 line 9.)

12. Attached to this Joint Final Pre-Trial Order are true and exact copies of the defendant's weekly compensation plan applicable to boxpersons, floorpersons and pit bosses. The forms were identified as Exhibits 12 and 13 in the August 19, 1985 deposition of Paul Burst, Director of Gaming Operations, copies of which are attached to this Pre-Trial Order. (Defendant's Responses to Plaintiff's Third Set of Interrogatories, responses 1(a) through 4(h); Joint Exhibit #10.)

13. Paul Burst, Director of Gaming Operations of The Claridge Hotel and Casino is the person most knowledgeable about the operation of the defendant's compensation plan referred to above at Stipulation #12, particularly with reference to situations where an employee subject to the plan was absent due to sickness or personal reasons. (Defendant's response to Plaintiff's First Set of Interrogatories, response 23.)

14. The Claridge Hotel and Casino paid several persons a total weekly compensation that was less than \$250

for the week. The persons and the workweeks are identified in Plaintiff's First Set of Requests for Admissions 41 through 50 and 54 through 59 and Defendant's responses thereto, and defendant's response to interrogatory 15, Plaintiff's Second Set of Interrogatories.

15. In each instance referred to above in Stipulation #14 the total compensation was derived by multiplying the total hours worked for the week by an hourly amount which was derived by dividing a daily rate by eight (8), nine (9) or ten (10) hours.

16. During the period October 1, 1981 through the present under defendant's compensation plan in any week where although some service was performed, if an absence was voluntary the plan was inapplicable. (Defendant's Responses to Plaintiff's First Set of Requests for Admission, response 61; Deposition of Paul Burst, page 111, line 8 through page 121 line 2; deposition of Carol Livingstone, page 30, line 24 through page 36 line 20.)

17. During the period October 1, 1981 through January 30, 1983, under defendant's compensation plan, referred to in Stipulation # 12 above, in any week where although some service was performed, if an absence was due to personal reasons, the plan was inapplicable. (Defendant's Responses to Plaintiff's First Set of Requests for Admission, response 62.)

18. During the period October 1, 1981 through January 30, 1983, when a boxperson or floorperson went home early as a result of an "early out" his compensation for the day was calculated by multiplying the number of hours of actual work for the day by an hourly amount derived by dividing the applicable daily rate by

eight, nine or ten hours. (Defendant's Responses to Plaintiff's First Set of Requests for Admission, responses 68 and 69.)

19. During the period October 1, 1981 through the present, persons employed as pit bosses, boxpersons and floor persons had, as the primary duty, the management of the enterprise in which they were employed or of a customarily recognized department or subdivision thereof, as those terms are used in 29 CFR §541.1(a) and §541.119. (Plaintiff's Response to Defendant's First Request for Admissions, para. 1, 2 and 3.)

20. During the period October 1, 1981 through the present, persons employed as pit bosses, boxpersons and floor persons customarily and regularly directed the work of two or more other employees therein, as those terms are used in 29 CFR §541.1(b) and §541.119. (Plaintiff's Response to Defendant's First Request for Admissions, para. 4, 5 and 6.)

PART III. PLAINTIFF'S CONTESTED FACTS:

A. Plaintiff intends to prove the following contested facts in regard to liability:

- (1) Persons employed as boxpersons, floorpersons and pit bosses during the period October 1, 1981 to date were not compensated for their services on a salary basis at a rate of not less than \$155 per week.
- (2) Persons employed as boxpersons, floorpersons and pit bosses during the period October 1, 1981 to date are not exempt from the overtime provisions of the Fair Labor Standards Act.

B. Plaintiff intends to prove the following contested facts in regard to damages:

- (1) In each week from October 1, 1981 to the present in which the subject employees worked and were paid straight time hourly wages for hours worked over forty (40) each person is due a sum equal to 50% of the straight time hourly wages already paid for each hour worked over forty (40).
- (2) In each week from October 1, 1981 to the present, the failure to pay overtime wages to boxpersons, floorpersons and pit bosses was not inadvertent but conscious and intended.
- (3) The defendant was aware not only that the Fair Labor Standards Act applied to its operation generally but was * * *.

APPENDIX F**§ 213. Exemptions**

(a) The provisions of sections 206 and 207 of this title shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

APPENDIX G .**§ 541.1 Executive.**

The term "employee employed in a bona fide executive * * * capacity" in section 13(a) (1) of the Act shall mean any employee:

(a) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department of subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section: *Provided*, That this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he is employed; and

(f) Who is compensated for his services on a salary basis at a rate of not less than \$155 per week (or \$130 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities: *Provided*, That an employee who is compensated on a salary basis at a rate of not less than \$250 per week (or \$200 per week, if employed by other than the Federal Government in Puerto Rico, the Virgin Islands or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all the requirements of this section.

* * *

§ 541.118 Salary basis.

(a) An employee will be considered to be paid "on a salary basis" within the meaning of the regulations if under his employment agreement he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided below, the employee must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked. This policy is also subject to the general rule that an employee need not be paid for any workweek in which he performs no work.

(1) An employee will not be considered to be "on a salary basis" if deductions from his predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. Accordingly, if the employee is ready, willing, and able to work, deductions may not be made for time when work is not available.

(2) Deductions may be made, however, when the employee absents himself from work for a day or more for personal reasons, other than sickness or accident. Thus, if an employee is absent for a day or longer to handle personal affairs, his salaried status will not be affected if deductions are made from his salary for such absences.

(3) Deductions may also be made for absences of a day or more occasioned by sickness or disability (including industrial accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by both sickness and disability. Thus, if the employer's particular plan, policy or practice provides compensation for such absences, deductions for absences of a day or longer because of sickness or disability may be made before an employee has qualified under such plan, policy or practice, and after he has exhausted his leave allowance thereunder. It is not required that the employee be paid any portion of his salary for such days or days for which he receives compensation for leave under such plan, policy or practice. Similarly, if the employer operates under a State sickness and disability insurance law, or a private sickness and disability insurance plan, deductions may be made for absences of a working day or longer if benefits are provided in accordance with the particular law or plan. In the case of an industrial accident, the "salary basis" requirement

will be met if the employee is compensated for loss of salary in accordance with the applicable compensation law or the plan adopted by the employer, provided the employer also has some plan, policy or practice of providing compensation for sickness and disability other than that relating to industrial accidents.

(4) Deductions may not be made for absences of an employee caused by jury duty, attendance as a witness, or temporary military leave. The employer may, however, offset any amounts received by an employee as jury or witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(5) Penalties imposed in good faith for infractions of safety rules of major significance will not affect the employee's salaried status. Safety rules of major significance include only those relating to the prevention of serious danger to the plant, or other employees, such as rules prohibiting smoking in explosive plants, oil refineries, and coal mines.

(6) The effect of making a deduction which is not permitted under these interpretations will depend upon the facts in the particular case. Where deductions are generally made when there is no work available, it indicates that there was no intention to pay the employee on a salary basis. In such a case the exemption would not be applicable to him during the entire period when such deductions were being made. On the other hand, where a deduction not permitted by these interpretations is inadvertent, or is made for reasons other than lack of work, the exemption will not be considered to have been lost if the employer reimburses the employee for such deductions and promises to comply in the future.

(b) *Minimum guarantee plus extras.* It should be noted that the salary may consist of a predetermined amount constituting all or part of the employee's compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment. The requirement will be met, for example, by a branch manager who receives a salary of \$155 or more a week and in addition, a commission of 1 percent of the branch sales. The requirement will also be met by a branch manager who receives a percentage of the sales or profits of the branch, if the employment arrangement also includes a guarantee of at least the minimum weekly salary (or the equivalent for a monthly or other period) required by the regulations. Another type of situation in which the requirement will be met is that of an employee paid on a daily or shift basis, if the employment arrangement includes a provision that the employee will receive not less than the amount specified in the regulations in any week in which the employee performs any work. Such arrangements are subject to the exceptions in paragraph (a) of this section. The test of payment on a salary basis will not be met, however, if the salary is divided into two parts for the purpose of circumventing the requirement of payment "on a salary basis". For example, a salary of \$200 in each week in which any work is performed, and an additional \$50 which is made subject to deductions which, are not permitted under paragraph (a) of this section.

(c) *Initial and terminal weeks.* Failure to pay the full salary in the initial or terminal week of employment is not considered inconsistent with the salary basis of payment. In such weeks the payment of a proportionate part of the employee's salary for the time actually worked will meet the requirement. However, this should not be construed to mean that an employee is on a salary

basis within the meaning of the regulations if he is employed occasionally for a few days and is paid a proportionate part of the weekly salary when so employed. Moreover, even payment of the full weekly salary under such circumstances would not meet the requirement, since casual or occasional employment for a few days at a time is inconsistent with employment on a salary basis within the meaning of the regulations.

* * *

§ 541.119 Special proviso for high salaried executives.

(a) Except as otherwise noted in paragraph (b) of this section, § 541.1 contains an upset or high salary proviso for managerial employees who are compensated on a salary basis at a rate of not less than \$250 per week exclusive of board, lodging, or other facilities. Such a highly paid employee is deemed to meet all the requirements in paragraphs (a) through (f) of § 541.1 if the employee's primary duty consists of the management of the enterprise in which employed or of a customarily recognized department or subdivision thereof and includes the customary and regular direction of the work of two or more other employees therein. If an employee qualifies for exemption under this proviso, it is not necessary to test that employee's qualifications in detail under paragraphs (a) through (f) of § 541.1 of this part.

(b) In Puerto Rico, the Virgin Islands, and American Samoa the proviso of § 541.1(f) applies to those managerial employees (other than employees of the Federal Government) who are paid on a salary basis at a rate of not less than \$200 per week.

(c) Mechanics, carpenters, linotype operators, or craftsmen of other kinds are not exempt under the proviso no matter how highly paid they might be.

* * *

APPENDIX H

United States Department of Labor
Wage and Hour Division
Washington, D. C.

**"EXECUTIVE, ADMINISTRATIVE,
PROFESSIONAL . . . OUTSIDE
SALESMAN" REDEFINED**

Effective October 24, 1940

Report and Recommendations of the
Presiding Officer
at Hearings Preliminary to Redefinition

* * *

EXEMPTION APPLIES ONLY TO SALARIED EMPLOYEES

It is hardly necessary to restate what has always been the position of the Wage and Hour Division, namely, that the \$30 for a workweek can be translated into equivalent terms for longer periods. Thus the requirement is fulfilled if the worker is paid \$130 for a month or a comparable amount for any other pay period. However, the requirement is not fulfilled by the earnings of a person who is paid on an hourly basis. The shortest pay period which can properly be understood to be appropriate for a person employed in an executive capacity is obviously a weekly pay period and hourly paid employees should not be entitled to the exemption. The executive status in and of itself connotes at least the tenure implied by a weekly pay period as the very minimum. Accordingly, it is recommended that this clause in the definition read: "Who is compensated for his services on a salary basis at not less than \$30 per week (exclusive of board, lodging, or other facilities)." One final explanation may be made. In some instances persons who would otherwise qualify as executive employees, particularly sales managers and branch sales managers, are paid in part or in full by methods of compensation which include commissions, drawing accounts, and other items. In such instances the salary requirement will be met if the employee is guaranteed a net compensation of not less than \$30 a week "free and clear." Similarly, if board and lodging are involved, there should be a "free and clear" payment of \$30 each week in cash.

It was also suggested that the phrase should read "at not less than the rate of \$30 * * * for a workweek."⁷⁹ It was explained that this proviso was to take care of certain executives who are hired on a part-time basis. This would seem quite unnecessary, however, for a person earning at such a rate for part-time work would clearly fulfill the minimum wage requirements of the act and, if his work were only part-time, would not be subject to overtime payments. The modification therefore seems unnecessary.

* * *

Appendix A. PRESENT DEFINITIONS

PART 541

Regulations Defining and Delimiting the Terms "Any Employee Employed in a Bona Fide Executive, Administrative, Professional, or Local Retailing Capacity, or in the Capacity of Outside Salesman" Pursuant to section 13 (a) (1) of the Fair Labor Standards Act

Section 541.1. Executive and administrative.

The term "employee employed in a bona fide executive (and) administrative * * * capacity" in section 13 (a) (1) of the act shall mean any employee whose primary duty is the management of the establishment, or a customarily recognized department thereof, in which he is employed, and who customarily and regularly directs the work of other employees therein, and who has the authority to hire and fire other employees or whose suggestions and recommendations as to the hiring and

79. Statement of Noel Sargent, National Association of Manufacturers, record June 3-5, hearing, vol. III, p. 374.

firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight, and who customarily and regularly exercises discretionary powers, and who does no substantial amount of work of the same nature as that performed by nonexempt employees of the employer, and who is compensated for his services at not less than \$30 (exclusive of board, lodging, or other facilities) for a workweek.

* * *

Appendix B. RECOMMENDED DEFINITIONS

EXECUTIVE

Section 541.1. Executive.

The term "employee employed in a bona fide executive * * * capacity" in section 13 (a) (1) of the act shall mean any employee—

(A) Whose primary duty consists of the management of the establishment in which he is employed or of a customarily recognized department or subdivision thereof, and

(B) Who customarily and regularly directs the work of other employees therein, and

(C) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight, and

(D) Who customarily and regularly exercises discretionary powers, and

(E) Who is compensated for his services on a salary basis at not less than \$30 per week' (exclusive of board, lodging, or other facilities), and

(F) Whose hours of work of the same nature as that performed by nonexempt employees do not exceed 20 percent of the number of hours worked in the work-week by the nonexempt employees under his direction; provided that this subsection (F) shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment.

* * *

APPENDIX I

Part I Chap. 10

719

EFFECT OF DEDUCTIONS FROM SALARY

Effect of Disciplinary Deductions from Salary—

*Wage and Hour Division Release No. A-9,
Issued Aug. 24, 1944*

An employee will be considered to be paid on a "salary basis" within the meaning of sections 541.1, 541.2 or 541.3 of Regulations, Part 541 if under his employment agreement he regularly receives each pay period, on a weekly, biweekly, semi-monthly, monthly or annual basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the number of hours worked or in the quantity or quality of the work performed during the pay period. However, the fact that less than this amount is paid for a particular pay period because disciplinary deductions are made for unreasonable absences would not in itself prove that the employee is not employed on a salary basis. On the other hand, since it is well recognized that bona fide executive, administrative, and professional employees are normally allowed some latitude with respect to the time spent at work, an employee will not be regarded as being paid on a salary basis if deductions are made for those types of absences ordinarily allowed such employees. For example, an employee is not being paid on a salary basis if the employer makes deductions from his salary for an afternoon when he goes home early or when he occasionally takes a day off, unless, under the circumstances of a particular case, such absences must be considered unreasonable.

APPENDIX J.

United States Department of Labor
Maurice J. Tobin, *Secretary*

Wage and Hour and Public Contracts Divisions
Wm. R. McComb, *Administrator*

Washington, D. C.

REPORT AND RECOMMENDATIONS
On Proposed Revisions of Regulations, Part 541

Defining the Terms

"Executive" "Administrative"

"Professional"

"Local Retailing Capacity"

"Outside Salesman"

. as contained in Section 13(a)(1) of the
Fair Labor Standards Act of 1938, providing
exemptions from the wage and hour provisions of
the act.

June 1949

* * *

"On a Salary * * * Basis"

The notice of hearing invited evidence on the need for revision or definition of the term "on a salary * * * basis." In response to this notice, a number of proposals relating to the "salary basis" requirements in the regulations were made in the course of the hearing. One of these was that the requirement of payment "on a salary * * * basis" be eliminated and that "average compensation" be used instead;⁹⁰ another, that employees be permitted to qualify for exemption even if paid an hourly wage.⁹¹ Some witnesses suggested that the term "salary basis" be defined to mean payment of a fixed or guaranteed sum.⁹² The evidence at the hearing showed clearly that bona fide executive, administrative, and professional employees are almost universally paid on a salary or fee basis. Compensation on a salary basis appears to have been almost universally recognized as the only method of payment consistent with the status implied by the term "bona fide" executive.⁹³ Similarly, payment on a salary (or fee) basis is one of the recognized attributes of administrative and professional employment. The proposals to eliminate the requirement and to apply an hourly rate or average earnings test may therefore be rejected as inconsistent with true executive, administrative or professional status.

90. National Association of Motor Bus Operators, transcript, p. 1792.

91. Lennox Furnace Co., S. L. No. 9.

92. Office Employees International Union, AFL, transcript, p. 2734; National Coal Association, transcript, p. 1473; and Central Pennsylvania Coal Producers' Association, transcript, p. 1581.

93. See, for example, transcript, pp. 99-100, 134-135, 399, 707, 771-772, 999-1000, 1431-1432. The argument was also made, however, that the requirement of payment on a salary basis is illegal. See Exhibit No. 15.

A number of questions have arisen in the past in connection with the interpretation of the phrase "on a salary * * * basis" particularly with respect to the effect of deductions on the salaried status of an employee. The problem became of some importance during the war when the practice of making such deductions was adopted by some companies engaged in war production as a disciplinary measure to discourage absenteeism among executive and administrative employees.⁹⁴ This practice raised serious questions as to whether any employees to whom it was applied were actually employed "on a salary * * * basis" in accordance with the provisions of the regulations. Investigation by the Divisions indicated that this changed practice had become sufficiently widespread to warrant the conclusion that the wartime industrial practice differed from the pre-war practice and that such disciplinary deductions were no longer inconsistent with payment "on a salary * * * basis." In an effort to meet the wartime problems and to clarify the meaning of the term "on a salary * * * basis" the Divisions issued a restatement of position, the pertinent portion of which follows:

An employee will be considered to be paid on a "salary basis" within the meaning of sections 541.1, 541.2, or 541.3 of Regulations, Part 541, if under his employment agreement he regularly receives each pay period, on a weekly, biweekly, semimonthly, monthly, or annual basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the number of hours worked or in the quantity or quality of the work performed during the pay period. However, the

94. Transcript, pp. 23, 1253-1254.

fact that less than this amount is paid for a particular pay period because disciplinary deductions are made for unreasonable absences would not in itself prove that the employee is not employed on a salary basis. On the other hand, since it is well recognized that bona fide executive, administrative, and professional employees are normally allowed some latitude with respect to the time spent at work, an employee will not be regarded as being paid on a salary basis if deductions are made for those types of absences ordinarily allowed such employees. For example, an employee is not being paid on a salary basis, if the employer makes deductions from his salary for an afternoon when he goes home early or when he occasionally takes a day off, unless, under the circumstances of a particular case, such absences must be considered unreasonable.⁹⁵

As a result of this statement of position the problems created by the peculiar wartime conditions in many plants were solved but as an incident thereof, numerous administrative difficulties were encountered. For example, employers as well as the Divisions were faced with the need for determining in particular cases whether absences were reasonable or unreasonable and whether unreasonable absences included absences for longer periods than were allowed under established company plans for sick leave and "annual" leave. Since the answer to this latter question was determined to depend upon the reasonableness of the particular leave plan, employers had to decide for themselves and the Divisions in many instances were

95. Release A-9 dated August 24, 1944, "Payment on 'Salary Basis' for Executive, Administrative and Professional Employees Clarified."

compelled to rule on specific leave plans to determine whether the leave plans were "reasonable" in nature. Employers were thus subject to considerable uncertainty prior to obtaining the opinion of the Divisions and the Divisions were faced with an undesirable administrative burden in giving such opinions. In my opinion, moreover, the building of such an elaborate structure of interpretation upon the simple phrase "on a salary * * * basis" should be avoided if possible in the interests of good administration.

The testimony at the hearings indicated that the practice of disciplining bona fide executive, administrative, and professional employees by making deductions from their salaries had been a wartime phenomenon, resulting from rapid upgrading, the pressure of long hours, and other temporary conditions. Such deductions are rarely made today. The disciplining of such employees in the rare instances where it is needed is usually accomplished in other ways than by deductions from salary.⁹⁶ There appears to be no present need for a definition of "salary basis" as difficult to apply as the one now followed by the Divisions, particularly since it is not consistent with the common understanding of the phrase as it applies to bona fide executive, administrative, and professional employees.⁹⁷ In view of the changed conditions, payment of anything less than the full salary seems to cast doubt upon the bona fide character of the employee's executive, administrative, or professional status.

96. See, for example, transcript, pp. 23, 134-135, 399, 630-632, 1001, 1336-1337, 2759.

97. Some representatives of employers urged that provision for deductions be retained. For example, see transcript, p. 1359.

I recommend that the official explanation of the regulations⁹⁸ make it clear that the term "on a salary * * * basis" requires that the employee receive his full salary for any week in which he performs any work without regard to the number of days or hours worked.⁹⁹ This recommendation may be accomplished by defining the term in the following language:

An employee will be considered to be paid on a salary basis within the meaning of these regulations, if under his employment agreement he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the number of hours worked in the workweek or in the quality or quantity of the work performed.

The question may be raised in connection with the above recommendation whether the proposed definition of "salary basis" in all cases excludes employment on a commission basis, hourly rate, percentage of profit, or similar methods of payment resulting in varying amounts of weekly earnings. It should be noted that the language "a predetermined amount constituting all or part of his compensation" is used in the proposed definition. It is the purpose of this phrase to make it clear that additional compensation besides the salary is not inconsistent with the salary basis of payment. The require-

98. Later in this report the recommendation is made to issue an explanatory bulletin together with the revised regulations.

99. This recommendation is not intended to affect the Divisions' general position under the act that payment is not required in any week in which no work is performed.

ment will be met, for example, by a branch manager who receives a salary of \$75 or more per week and, in addition, a commission of 1 percent of the branch sales. The requirement will also be met by a branch manager who receives a percentage of the sales or profits of his branch, if the employment arrangement also includes a guarantee of at least the minimum weekly salary (or the equivalent for a monthly or other period) required by the regulations. Another type of situation in which the requirement will be met is that of an employee paid on a daily or shift basis, if the employment arrangement includes a provision that he will receive not less than the amount specified in the regulations in any week in which he performs any work.¹⁰⁰ The test of payment on a salary basis will not be met, however, if the salary is divided into two parts for the purpose of circumventing the requirement that the full salary must be paid in any week in which any work is performed. For example, a salary of \$100 a week may not arbitrarily be divided into a guaranteed minimum of \$75 paid in each week in which any work is performed, and an additional \$25 which is made subject to deductions.

Failure to pay the full salary in the initial or terminal week of employment is not considered inconsistent with the salary basis of payment. In such weeks the payment of a proportionate part of the employee's salary for the time actually worked will meet the requirement. However, this should not be construed to mean that an employee is on a salary basis within the meaning of the

100. A representative of the coal industry testified that section foremen who are paid on a daily basis plus a minimum weekly guarantee enjoy all the privileges of salaried employees. Transcript, pp. 1522-1524.

regulations if he is employed occasionally for a few days and is paid a proportionate part of the weekly salary when so employed. Moreover, even payment of the full weekly salary under such circumstances would not meet the requirement, since casual or occasional employment for a few days at a time is inconsistent with employment on a salary basis within the meaning of the regulations.

* * *

Need for an Explanatory Bulletin

Reference has been made in this report to an explanatory bulletin or an "official explanation" to be issued in connection with the regulations. Explanation or clarification of various portions of the regulations was suggested by many witnesses in the course of the hearing.²³⁷ Some witnesses showed a lack of familiarity with rulings made by the Divisions and a lack of knowledge of how the Divisions applied the regulations in certain kinds of cases.²³⁸ The issuance of such explanatory material has been repeatedly urged by the Divisions' regional directors who believe that it would be of great value not only to employers and employees but also to the Divisions' field staff. It is also clear that the material in the report of the presiding officer in 1940 (the Stein Report), which has been the Divisions' explanatory bulletin on these regulations, needs revision in the light of the Divisions' rulings and the court decisions since its issuance. If the recommendations made above with respect to revisions in the regulations are adopted, it will be necessary to

237. See, for example, transcript, pp. 562, 679, 1129, 1177, 1441, 2226, 2766, 3134-3135. See also S. L. No. 85.

238. For example, see transcript, pp. 3675-3676, 3678-3679.

issue material illustrating their application in various situations. The issuance of some explanatory material is also essential in order to give effect to certain recommendations made in this report which do not involve changes in the language of the regulations, but are based on the meaning to be given the terms used in the regulations.

I recommend that simultaneously with the final action taken on the recommendations in this report the Divisions issue a bulletin explaining and illustrating the meaning of the terms used in the regulations, and containing, among other things, the material included in this report. I also recommend that this report be designated as the official interim explanation of the regulations if it does not prove practicable to issue such a bulletin simultaneously with the regulations.

* * *

APPENDIX K

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

JUNE 3, 1985

Thomas P. Rebel, Esquire
Fisher & Phillips
3500 First Atlanta Tower
Atlanta, Georgia 30383

Dear Mr. Rebel:

This is in response to your letter of April 2 in which you request an administrative opinion as to the exempt status of certain registered nurses employed by a hospital. Your letter states that these nurses have appropriate baccalaureate degrees and perform work in the various patient care wards which is normally performed by registered nurses in a hospital.

You indicate that the hospital proposes to guarantee each of these nurses \$340 biweekly, except where they are willfully absent from work or after they have exhausted their sick leave under the hospital's sick leave plan. In any such case you state that the guarantee will be reduced by a prorata portion based upon increments of a day or more in relation to normal days scheduled. According to your letter, the hospital proposes to pay these nurses on an hourly basis and to pay an over-time premium after 80 hours in the biweekly period. However, you indicate that the hospital will not pay

an overtime premium after 8 hours in a day. Based on the last paragraph of the first page of your letter, other than the exceptions mentioned above, the hospital will ensure that these nurses will receive at least \$340 each biweekly period regardless of the hours they actually work in such period.

On April 16 and May 1 a member of my staff contacted you by telephone. In those conversations you indicated that only full-time registered nurses would be paid on this guaranteed basis. In the biweekly period the nurses would generally work over 30 hours in one week and over 40 hours in the other week. The usual schedule would be 36 hours in one week and 44 in the other week. The nurses will be paid wage rates that range from \$7 per hour to \$13 per hour.

Under this guarantee, you said that if the nurses work any fraction of an hour for one day of the biweekly period, they will be paid the \$340 guarantee. Any reduction of the biweekly guarantee for being "willfully absent" is intended to conform with section 541.118(a) (2) of the enclosed Regulations, 29 CFR Part 541. You said that this meant that deductions may be made when the employees are absent from work for a day or more for personal reasons. You also stated that in the initial and terminal weeks, in accordance with section 541.118 (c), a proportionate part of the guarantee may be paid for the actual time worked. No deduction will be made, however, for any day in which the nurses perform any work.

Section 13(a) (1) of the Fair Labor Standards Act (FLSA) provides a minimum wage and overtime pay exemption for any employee employed in a bona fide executive,

administrative, or professional capacity, as those terms are defined in Regulations, 29 CFR Part 541. An employee may qualify for exemption as a bona fide professional employee if all of the pertinent tests relating to duties, responsibilities, and salary, as discussed in section 541.3 of the regulations, are met.

Registered nurses employed in work comprising the duties and responsibilities normally involved in the work of registered nurses in a hospital have traditionally been recognized by the Wage and Hour Division as bona fide professional employees where they meet all of the pertinent tests relating to duties, responsibilities, and salary, as discussed in section 541.3 of the regulations. Payment on a salary or fee basis of not less than \$170 per week currently meets the salary test for exemption.

An employee will not be considered to be "on a salary basis" if deductions from the predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. Accordingly, if the employee is ready, willing, and able to work, deductions may not be made for times when the work is not available. Pursuant to section 541.118(a) (3), deductions from the salary may be made for absences of a day or more occasioned by sickness or disability (including industrial accidents) if the deduction is made in accordance with a bona fide plan, policy, or practice of providing compensation for loss of salary occasioned by both sickness and disability. Deductions may not be made for absences of an employee caused by jury duty, attendance as a witness, or temporary military leave. The employer may, however, offset any amounts received by an employee as jury or witness fees or military pay

A104

for a particular week against the salary due for that particular week without loss of exemption.

Since the nurses in question are guaranteed \$340 biweekly, it is our opinion from the information you provided that such registered nurses would be considered as paid "on a salary basis," and may qualify for exemption as a bona fide professional employee under FLSA section 13(a)(1) when all of the other tests for exemption contained in section 541.3 are met.

We trust that the above information will be of assistance to you.

Sincerely,

/s/ Nancy M. Flynn

for

Herbert J. Cohen

Deputy Administrator

Enclosure

APPENDIX L

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

MARCH 27, 1986

John E. Thompson, Esquire
Fisher & Phillips
3500 First Atlanta Tower
Atlanta, Georgia 30381-0101

Dear Mr. Thompson:

This is in further response to your letter of November 20, 1985, with enclosures, in which you request an opinion as to whether a pay plan proposed by your client would compensate the affected employees in accordance with the salary requirement tests contained in section 541.118 of Regulations, 29 CFR Part 541. Your letter states that, in determining whether the employees in question are paid "on a salary basis" pursuant to section 541.118, we are to assume that the employees meet all of the other tests for exemption as bona fide executive employees under section 13(a)(1) of the Fair Labor Standards Act (FLSA) and 29 CFR Part 541.

In a telephone conversation with a member of my staff on January 21, you said that the employees in question would be paid on a predetermined hourly rate basis but would be guaranteed a base salary of \$250 per week for a 5-day workweek. Except for those deductions for whole workdays which are in accordance with the salary prin-

ciples of section 541.118, the guaranteed salary of \$250 is the minimum amount which would be paid for any week in which some work is performed. Accordingly, one-fifth of the minimum weekly guarantee of \$250, or \$50, would be the minimum payment for any day in which work is performed. The employer has an established plan for providing the employees with paid sick leave. Your letter provided the following examples to illustrate the operation of the proposed pay plan:

- (1) Employee A works 42 hours in his usual 5-day workweek and is assigned an hourly rate of \$7.50 per hour. His gross pay would be \$315 ($42 \text{ hours} \times \7.50).
- (2) In another workweek, employee A leaves work early on 4 days and works a total of 30 hours. Although his hourly rate would produce \$225 ($30 \text{ hours} \times \7.50), he would be paid the guarantee of \$250.
- (3) Assume that, in the preceding example, employee A left work early on 2 days but was also absent for 2 full days for personal reasons. Nevertheless, he managed to work 30 hours in the 3 days. Although under section 541.118(a)(2) the employer could pay him \$150 ($3/5 \times \250), he would receive \$225 ($30 \text{ hours} \times \7.50) pursuant to the hourly rate aspect of the pay plan.
- (4) In another workweek employee A works 4 hours on one day and is sick for the remainder of the week. He had previously exhausted the sick days allowed by the employer. Although his hourly pay would be \$30, he would be paid \$50 ($1/5 \times \$250$).

Section 13(a)(1) of FLSA provides a minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity as those terms are defined in the appropriate sections of Regulations, 29 CFR Part 541. One requirement for exemption is that the employee be paid "on a salary basis" as discussed in section 541.118.

Section 541.118(a) states that an employee will be considered to be paid "on a salary basis" within the meaning of the regulations if under the employee's employment agreement the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. The employee must receive his or her full salary for any week in which he or she performs any work without regard to the number of hours worked.

Deductions which may be made from an employee's compensation without affecting the employee's salary basis of payment are found in sections 541.118(a)(2), (3), and (5). Deductions from the salary of an otherwise exempt employee which would affect the salary basis of payment are found in sections 541.118(a)(1) and (4).

As stated in section 541.118(a)(2), deductions may be made from the salary of an exempt employee when the employee is absent from work for a day or more days for personal reasons, other than sickness or accident. As stated in sections 541.118(a)(3), deductions may also be made for absences of a day or more days occasioned by sickness or disability if the deductions are made in accordance with a bona fide plan, policy, or practice of providing compensation for loss of salary occasioned by both

sickness and disability. Thus, if the employer's particular plan, policy, or practice provides compensation for such absences, deductions for absences of a day or more days may be made before an employee has qualified under such plan, policy, or practice, and after the employee has exhausted the leave allowance thereunder.

Where deductions are allowed for a day or more days, we do not take the position that any particular number of hours (such as 8 hours) constitutes a day for salary deduction purposes, as is permitted in section 541.118. For example, where there is an understanding that the normal workweek consists of 5 workdays, the deductions permissible under section 541.118 must be calculated on the basis of one-fifth of a 5-day workweek. The daily amount thus computed is applicable regardless of the number of hours the employee is scheduled to work.

We wish to point out, however, that deductions from the salary of an otherwise exempt employee for absences of less than a day's duration for personal reasons, or for sickness or disability, would not be in accordance with sections 541.118(a)(2) and (3). For example, where an employee works part of a workday but leaves 4 hours early due to illness and has exhausted his or her apportionment of paid sick leave, the employee would not qualify for exemption under section 13(a)(1) of FLSA and 29 CFR Part 541 if the employee's pay is reduced for the 4-hour absence.

Where an occasional deduction that is not permitted by section 541.118 is made from the salary of an otherwise exempt employee, the exemption would be lost in that workweek when the deduction is made. However, if such deductions are regular and recurring, we would question whether the employee is actually being paid

"on a salary basis" and the exemption may be denied in all workweeks in which it is claimed, including those weeks when no deductions are made.

Although payment on an hourly rate basis generally does not meet the salary requirement of the regulations, an employee will be considered as employed "on a salary basis" if he or she is guaranteed an amount which is not less than the salary prescribed by the regulations. Pursuant to sections 541.118(a) and (b), the salary may consist of a predetermined amount constituting all or part of the employee's compensation. Additional compensation besides the salary is not inconsistent with the salary basis of payment.

Although it would not be appropriate for us to approve or disapprove of the salary acknowledgement attachment to your letter, it is our opinion that an employee who is paid in accordance with the proposed pay plan, as described in your letter and in the examples contained in paragraph 2 above, may be considered as paid "on a salary basis" as discussed in section 541.118 of 29 CFR Part 541. Such an employee may qualify for exemption as a bona fide executive employee under section 13(a) (1) of FLSA if all of the other tests for exemption contained in section 541.1 of the regulations are met.

We trust that the above will be of assistance to you. We regret that the greatly increased workload experienced by this office did not permit us to respond sooner.

Sincerely,

/s/ Nancy M. Flynn

for

Herbert J. Cohen

Deputy Administrator

Enclosures

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Law Offices
FISHER & PHILLIPS
(A Partnership Including Professional Corporations)
3500 First Atlanta Tower
Atlanta, Georgia 30383-0101
Telephone (404) 658-9200
Telex 54-2331

November 20, 1985

Mr. Herbert J. Cohen
Acting Administrator
U.S. Department of Labor
Wage and Hour Division
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Request for Opinion

Dear Mr. Cohen:

We hereby request your official opinion as to the compliance status of the following pay plan under the Fair Labor Standards Act ("the Act").

A. DESCRIPTION OF PLAN

This firm represents an employer who utilizes certain employees whose duties and responsibilities you may assume qualify them for the executive exemption set forth in Section 13(a)(1) of the Act.

The Employer wishes to claim that exemption for these employees and proposes to establish a pay plan under which these employees would be compensated according to a combined hourly-rate-with-guarantee system

so as to provide the "salary basis" required for that exemption pursuant to 29 C.F.R. §541.1

Specifically, a predetermined hourly rate well in excess of the statutory minimum would be assigned to each employee, and generally the employee's gross compensation would be computed by multiplying this rate times his or her hours worked for the pay period. However, each employee would be guaranteed a salary of at least \$250 a week for any week in which he or she performs any work, from which deductions would be made only in accordance with the salary-basis principles described in the interpretations at 29 C.F.R. §541.118.

The following examples illustrate the operation of this proposed plan:

(1) Employee A works 42 hours in his usual five-day week and is assigned an hourly rate of \$7.50 per hour. His gross pay would be $(42 \text{ hours}) \times (\$7.50) = \$315$.

(2) In another week, Employee A leaves work early on four days and works a total of only 30 hours. Although his hourly rate would produce only $(30 \text{ hours}) \times (\$7.50) = \$225$, he would be paid his guarantee of \$250.

(3) Assume that, in the prior example, Employee A left work early on two days but was also absent for two full days in connection with a personal hunting trip. Although pursuant to the interpretations the Employer could permissibly pay Employee A only \$250 - $(2/5 \times \$250) = \150 consistently with the salary-basis principles, pursuant to the hourly-based aspect of the pay plan he would receive $(30 \text{ hours}) \times (\$7.50) = \$225$.

(4) Finally, in another week, Employee A works 4 hours on one day and is then sick for the remainder

of the week. Employee A had previously exhausted his sick days allowed by the Employer. Although his hourly pay would amount to only $(4 \text{ hours}) \times (\$7.50) = \$30$, under the salary-basis principles he would be due $(\$250) - (4/5 \times \$250) = \$50$.

Thus, his gross pay would be \$50.

B. ANALYSIS OF COMPLIANCE STATUS

Based upon our evaluation of the relevant authorities, we conclude that this pay plan provides a true "salary basis" of payment sufficient to satisfy that component of the executive exemption.

Initially, the interpretations make it clear that the salary required for the executive exemption need not be the exclusive component of an executive employee's pay. As those provisions put it, "additional compensation besides the salary is not inconsistent with the salary basis of payment." 29 C.F.R. §S541.118(b). Indeed, in describing a plan closely analogous to that proposed here, the interpretations state that:

[a]nother type of situation in which the requirement will be met is that of an employee paid on a daily or shift basis, if the employment arrangement includes a provision that the employee will receive not less than the amount specified in the regulations in any week in which the employee performs any work.

Id.

Moreover, a plan such as that proposed here has been recommended in at least one Administrator's opinion in the past. In *Opinion Letter of the Wage-Hour*

Administrator No. 396, CCH Administrative Opinions ¶30,996.24 (September 23, 1965) (copy enclosed), the Administrator referred to the above-cited portions of the interpretations in stating that:

[t]he salary requirement would be satisfied by a payment in the prescribed amount which is guaranteed to the employee for each week in which he performs any work. . . , even though this is only a portion of the compensation paid him for such work and the total amount continues to be measured by an hourly or a daily rate.

The facts in that letter indicate that the guarantee required would, practically speaking, amount to only one or two days of pay for the employees in question.

We also point out that the plan outlined here is entirely different from that disapproved in Section 541.118 (b), in which a "guarantee" of \$200 is set, but the arrangement provides for payment of an additional \$50 per week which is subject to deductions on bases other than those approved in the interpretations. There, it is readily apparent that the true guarantee is \$250, and that improper deductions from this amount are contemplated.

By contrast, the current plan calls for but one, clearly specified guarantee, reductions in which would occur *only* in accordance with the interpretations.

Finally, while we realize that a written memorial of the pay plan is not required, the Employer proposes to have each employee sign such a document. A copy of the proposed plan is enclosed for your approval.

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In summary, we ask that you confirm our determination that the proposed pay method provides a proper "salary basis" of payment within the meaning of Section 541.1.

Your expeditious reply would be greatly appreciated.

Sincerely,

/s/ John E. Thompson
John E. Thompson
For FISHER & PHILLIPS

JET:dsw

Enclosure

CCH ADMINISTRATIVE OPINIONS ¶30,996.23

(September 22, 1965)

Opinion Letter of Wage-Hour Administrator.

Opinion Letter No. 395, September 22, 1965.

Fair Labor Standards Act

Exemption for Executive, Administrative and Professional Employees—Salary Requirement—Employees Compensated at Hourly or Daily Rates—Weekly Guarantee Agreement.—Highly-paid administrative and professional employees employed by consulting firms on an irregular project-by-project basis do not qualify for the executive, administrative and professional employees exemption of the Act where their compensations are computed solely on an hourly or daily basis. However, if the employers enter into a weekly wage guarantee agreement with their employees by which each employee is guaranteed that his weekly payment will not be less than an amount equal to the amount prescribed in the regulations, the salary test will be met even though payments under the agreement are only a portion of the total compensation of the employee and the compensation continues to be measured by an hourly or daily rate. FLSA, Section 13(a)(1).

Back reference.—¶ 25,210.31.

This is in further reference to your letter with which you enclosed a copy of an earlier letter concerning the application of section 13(a)(1) of the Fair Labor Standards Act to highly-paid administrative and professional employees employed by consulting firms on an irregular, project-by-project basis.

You are correct in your conclusion that payment of an employee solely on an hourly or daily rate basis does

not meet the salary requirement of the regulations and that an employee hired for a project solely on this basis would not qualify for exemption even though other requirements of the regulations were met. See *Craig v. Far West Engineering Co.*, [36 LC ¶ 65,339] 265 F. 2d 251, certiorari denied 361 U. S. 816. However, the regulations do not require that the predetermined weekly amount required constitute or govern the employee's total weekly compensation. The salary requirement would be satisfied by a payment in the prescribed amount which is guaranteed to the employee for each week in which he performs any work on a project or projects for the employer, even though this is only a portion of the compensation paid him for such work and the total amount continues to be measured by an hourly or daily rate. See 29 CFR 541.118(b).

Your letter indicates that these employees are paid at rates yielding \$75 to \$200 for a day's work of 7½ to 8 hours, and \$375 to \$1,000 or more per week of 35 to 40 hours. In the case of projects for the employer which involve the potentiality of overtime in excess of 40 hours work in any workweek (if they don't, obviously there is no need for the exemption), the salary test of the regulations could be met without changing the present method of computing total compensation, therefore, by simply guaranteeing the employee when he is employed for the project that his payment at the agreed rates in each week when he works on the project will not be less than an amount equal to the amount prescribed in the regulations. This would amount to a guarantee of at most one or two day's pay on the project in each week to such employees, and would not seem impractical for employees hired and paid on the basis outlined in your letters.

SALARY ACKNOWLEDGMENT

I understand that I am paid on a combined salary and hourly basis.

I am paid at an hourly rate for all my hours worked in each workweek.

However, I am guaranteed a minimum salary of \$250 a week for each week in which I perform any work, subject to deductions only for one or more days missed for personal reasons, or for one or more days missed due to illness or injury before I qualify for sick days and after I exhaust my sick days.

.....
EMPLOYEE SIGNATURE AND DATE

APPENDIX M

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

JANUARY 22, 1988

John E. Thompson, Esquire
Fisher & Phillips
3500 First Atlanta Tower
Atlanta, Georgia 30383-0101

Dear Mr. Thompson:

This is in reference to our letter to you dated March 27, 1986, in which we expressed the view that an employee who is paid in accordance with a proposed pay plan described in your letter of November 20, 1985, may be considered as paid "on a salary basis" within the meaning of sections 541.1(f) and 541.118 of 29 CFR Part 541. Upon further review of the facts set forth in your letter and of the conclusion expressed in ours, we have determined that our letter expresses an incorrect view, being inconsistent with the Department's established interpretation of section 541.118 of the regulations.

Section 541.118(a) states that an employee will be considered to be paid "on a salary basis" within the meaning of the regulations if under the employment agreement the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of

variations in the quality or quantity of the work performed. The employee must receive the full salary for any week in which any work is performed without regard to the number of hours worked. Further, section 541.118 (b) states that the test of payment on a salary basis will not be met if the purported salary is arbitrarily divided into two parts for the purpose of circumventing the requirement of payment "on a salary basis." The illustration is given of a weekly salary of \$200 and an additional \$50 which is made subject to deductions not permitted under section 541.118(a).

In section 22b03 of the Wage and Hour Field Operations Handbook (FOH) (copy enclosed), it is stated that an employee whose salary is computed on an hourly rate basis will be considered as employed "on a salary basis" if guaranteed a salary which is at least equal to the salary prescribed by the regulations, and [only] if there is a "reasonable relationship between the hourly rate, the regular or normal working hours, and the amount of the weekly guarantee." The FOH provides that the "reasonable relationship" test will be met "if the weekly guarantee is roughly equivalent to the employee's earnings at the assigned hourly rate for his normal [workweek]."

The rule for determining the circumstances under which a hybrid pay plan consisting in part of an hourly rate and in part of a weekly guarantee is, accordingly, different from the rule for determining when a hybrid of a guarantee and a daily or shift based rate will be deemed to be a "salary basis" plan. The latter rule is set forth at section 541.118(b) of the regulation, which provides that "the [salary] requirement will be met . . . if the employment arrangement includes a provision that the employee will receive not less than the amount specified

in the regulations in any week in which the employee performs any work."

As stated in section 541.118(a)(2), deductions may be made from the salary of an exempt employee when the employee is absent from work for a day or more days for personal reasons, other than sickness or accident. As stated in section 541.118(a)(3), deductions may also be made for absences of a day or more occasioned by sickness or disability if the deductions are made in accordance with a bona fide plan, policy, or practice of providing compensation for loss of salary occasioned by both sickness and disability.

In the example given in your letter, the employee works 42 hours in a usual 5-day workweek at an hourly rate of \$7.50. The gross pay would thus be \$315 (42 hours x \$7.50). In another workweek, the employee leaves work early on 4 days and works a total of 30 hours. In that week, the employee is paid a "guarantee" of \$250 (rather than \$225; 30 hours x \$7.50). In another workweek, the employee works 4 hours on one day and is sick for the remainder of the week. Sick leave days allowed by the employer had previously been exhausted. Although the daily pay would be \$30 (4 x \$7.50), the employee is paid \$50 ($1/5 \times \250).

Under the plan described in your letter, an employee paid on an hourly basis is "guaranteed" only \$250 per week, even though earnings at the assigned hourly rate for a normal workweek would be \$315. When sick for less than a day, and sick leave is exhausted, the employee is paid only \$50 for that day, rather than \$63 ($1/5 \times \315). In effect, deductions are made from the guarantee required by section 541.118 and section 22b03

of the FOH, even though the employee is absent for less than a day. Furthermore, the effect of the plan is to divide the weekly compensation into two parts, one part being made subject to improper deductions.

It thus appears that the plan presented in your letter is not a plan which satisfies the "salary basis" requirements of section 541.1(f). Accordingly, our letter to you dated March 27, 1986, is hereby withdrawn.

Sincerely,

/s/ Paula V. Smith

Paula V. Smith

Administrator

Enclosures

APPENDIX N

EXHIBIT A

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

FEBRUARY 19, 1988

Thomas P. Rebel, Esquire
Fisher & Phillips
3500 First Atlanta Tower
Atlanta, Georgia 30383

Dear Mr. Rebel:

On January 22, 1988, we wrote to Mr. John E. Thompson of your firm and advised him that an earlier letter to him dated March 27, 1986 contained an incorrect view of the law. Consequently we advised Mr. Thompson that the March 27, 1986 letter was withdrawn. A copy of our January 22, 1988 letter is enclosed.

Your firm has subsequently called our attention to another letter, which was addressed to you and dated June 3, 1985 (copy enclosed), and which concerns the same issue, namely whether employees paid an hourly rate may be considered to be compensated "on a salary basis", where the plan includes a guarantee which is equivalent to the minimum salary needed to qualify for exempt status under 29 C.F.R. Part 541 (\$170 per week, in the case of professional employees). Without reciting in detail the facts upon which your June 3, 1985 letter was based, it is clear that our opinion expressed in that letter is inconsistent

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with the Department's established interpretation of section 541.118 of the regulations for the reasons expressed in our January 22, 1988 letter.

Accordingly, our letter to you dated June 3, 1985, is hereby withdrawn.

Sincerely,

/s/ Paula V. Smith
Paula V. Smith
Administrator

Enclosures